

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA

v.

ROBERT MENENDEZ, *et al.*,

Defendants.

Criminal Action No. 23-490 (SHS)

Document electronically filed

**CERTIFICATION OF
LAWRENCE S. LUSTBERG IN SUPPORT
OF MR. HANA'S MOTION FOR A NEW
TRIAL**

I, LAWRENCE S. LUSTBERG, hereby certify as follows:

1. I am an attorney-at-law, admitted to the bars of the States of New York and New Jersey and admitted to practice in the United States District Court for the Southern District of New York, among other Courts. I am also a Director with Gibbons P.C., counsel for Defendant Wael Hana in the above-captioned matter.

2. I submit this Certification based upon my personal knowledge and review of the attached relevant documents in support of Mr. Hana's motion for a new trial addressed to evidence improperly provided to the jury.

3. Attached hereto as **Exhibit A** is a true and correct copy of an email from Avi Weitzman dated May 25, 2024.

4. Attached hereto as **Exhibit B** is a true and correct copy of an email from Lawrence Lustberg dated May 27, 2024.

5. Attached hereto as **Exhibit C** is a true and correct copy of an email from Christina Clark dated June 27, 2024.

6. Attached hereto as **Exhibit D** is a true and correct copy of an email from Paul Monteleoni dated April 28, 2024.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: December 20, 2024
Newark, New Jersey

By: *s/ Lawrence S. Lustberg*
Lawrence S. Lustberg
GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102
(973) 596-4500
llustberg@gibbonslaw.com

Attorneys for Defendant Wael Hana

Exhibit A

LaBruno, Christina M.

From: Weitzman, Avi <aviweitzman@paulhastings.com>
Sent: Saturday, May 25, 2024 7:09 PM
To: Mark, Eli (USANYS); PH-MenendezTeam
Cc: Fee, Adam J.; Solano Jr., Ricardo; Collart, Anne M.; LaBruno, Christina M.; Ball, Kelsey A.; Guarracino, Jessica L.; Cicognani, Elena M.; Monteleoni, Paul (USANYS); Lustberg, Lawrence S; Marino, Andrew J.; Cesar de Castro; Shannon McManus (smcmanus@cdecastrolaw.com); Kimberly Tabares; Seth Agata (sagata@cdecastrolaw.com); Richenthal, Daniel (USANYS); Pomerantz, Lara (USANYS); Clark, Christina (NSD)
Subject: GX 1302
Attachments: image001.png

External Email: Use caution with links and attachments.

USAO Team –

We have yet to receive a revised GX 1302 (the Egypt Summary Chart).

In the meantime, we want to raise an additional issue pertaining to certain documents cited in the prior version. A number of entries cite in whole or part to voluminous records. Row 349, for example, cites to GX B105, which is a 753 page text thread. Rows 29, 30, 38, 524, 525, and 526 cite to GX B212, which is an excel file containing over 1,050 messages. We are not objecting to the particular entries on the chart. But the exhibits should either be redacted or only the relevant portions offered. We reserve the right to object at trial if you do not properly redact or extract.

As a courtesy, please see below a list of the voluminous exhibits we have identified to date.

GX B105

GX B208

GX B209

GX B212

GX B213

GX B214

GX B220

GX B224

GX C111

GX C206

GX C207

GX B211

GX D101

GX D202

GX G301

Best,
Avi
Avi Weitzman
Co-Chair, Complex Litigation & Arbitration Practice Group Paul Hastings LLP
(w) (212) 318-6920
(c) (917) 670-5267

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Exhibit B

LaBruno, Christina M.

From: Lustberg, Lawrence S
Sent: Monday, May 27, 2024 10:59 PM
To: Richenthal, Daniel (USANYS); Monteleoni, Paul (USANYS); Mark, Eli (USANYS); Pomerantz, Lara (USANYS); Ghosh, Catherine (USANYS); Clark, Christina (NSD)
Cc: J. Fee Adam; Weitzman Avi; Cesar de Castro; McManus Shannon; Agata Seth; Tabares Kimberly; Solano Jr., Ricardo; Collart, Anne M.; LaBruno, Christina M.; Guarracino, Jessica L.; Ball, Kelsey A.; Marino, Andrew J.; Cicognani, Elena M.
Subject: GX 1303 and 1304

Counsel – As requested, here are our responses to GX1303 and GX 1304, subject to further supplementation depending upon our further discussions and the evolution of the evidence in this case. Because there were no line numbers in the versions of the charts that we received, we identified our objections by line number in the spreadsheet of objections that counsel for Senator Menendez sent for 1303 and 1304.

GX 1303

Leaving aside that GX 1303 appears to contain at least two exhibits that raise Speech or Debate issues (GX A101-66 and GX B105-31), a matter as to which we leave argument to counsel for Senator Menendez, on behalf of Mr. Hana, we would raise the following concerns:

- First, we have identified a number of errors in the summary:
 - Lines 7, 8, 13, 59, 60, 74, 99, 145, 183, 210, 211, 212, 281, 409, 467, 509, 517, 518, 519, 520, 521, 525, 539, 598, 601, 648, 673, 674, 675, 732, 777, 854, 871, 882, 900, 926, 933 – the time is incorrect
 - Line 10 – the “From” and “To” fields are reversed and the time is incorrect
 - Line 18 – incorrectly placed in the timeline as occurring after 9:02 PM; Mr. Critchley filed his notice of appearance at 3:58 PM (SDNY_R04_00436129)
 - Line 29 – GX C216-A does not exist
 - Line 32 – “at a restaurant” is not apparent from the text or picture provided; the date for GX B105-Q should be June 27, 2018
 - Lines 33, 47, 122, 227, 349, 381, 383, 542, 543, 565, 607, 642, 678, 695, 840, 890, 1056, 1132, 1137 – Detail provided does not appear in the exhibit cited
 - Line 90 – the “From” field and either the date or time are incorrect
 - Lines 95, 801 – the date/time provided is not apparent from the document
 - Line 96 – should read “what u r doing”
 - Lines 102, 442, 443, 495, 681, 773, 820 – the exhibits are incorrectly identified
 - Line 130 – “at swearing in” is not apparent from the text or picture provided
 - Line 132 – GX C115-31 does not exist
 - Lines 187, 495 – the “From” and “To” fields are reversed
 - Line 255 – no exhibit cited
 - Line 403 – date is incorrect
 - Lines 413, 489 – detail provided is incorrect
 - Line 525 – “From” and “To” fields are incorrect
 - Line 593, 679 – “To” field is incorrect
 - Line 786 – this is a call not a text
 - Lines 771, 803, 846, 954, 993, 994, 1081 – differs from the stipulated translation
 - Line 863, 1096 – typo in entry
 - Lines 899, 900 – GX E401 does not exist

- Second, we have identified a large number of descriptions that omit information. Some of those omissions are not terribly significant, but others render those descriptions, in our view, not only inaccurate but also unfair. These are found at lines 35, 49, 76, 107, 855, 932, 1010, 1011, 1072, and 1116. In each of these cases, what is omitted is obvious, but if you wish us to identify for you what those omissions are, please let us know and we will do so. Meanwhile, we would respectfully request that you examine these ten (10) documents and see if you agree with us that the summary does not fairly summarize the contents of the pertinent texts or email.
 - I should note that the summary at times includes information that, by contrast, is not included in the Exhibits, again in a way that renders the Exhibit unfair, in our view. These include Lines 332, 333, 334, 335, 336, 344, 359, 360, 362, 367, 370, 372, 373, 375, 377, in which the NB included in parenthesis is unsupported by the Exhibit, and Line 554, which says “sends pictures of luxury cars,” commentary not provided in the text message relied on.
- Third, once again, we reiterate our request that the Government identify unindicted coconspirators, if only to make things move more expeditiously. There are communications by the following people who do not appear to be coconspirators; if they are not, their statements appear, in a number of cases, to be hearsay. These include the following:
 - Detective Lopez – Lines 39, 76, 107, 899
 - Jason Barber – Line 37
 - “Patty Mark” – Lines 158, 160, 163, 164, 167, 171, 172
 - Leon Pereldik / “Leon Ray Catena” – Lines 572, 637, 655
 - Andre Aslanian – Lines 848, 850, 852
 - “Progressive Tom McGuire” – Line 94
 - “Nariah Progressive” —Lines 90, 138
 - “Lino” from Benzel Busch – Lines 280 and 409.
 - There also appear to be places where Ro Source, Kerrienne Schillari and even the NJ Office of the Attorney General make statements being admitted for truth, when they are clearly not co-conspirators.

In addition, in a number of cases in which those who have now been identified as conspirators are being quoted, we believe that their statements would fail the “in furtherance” requirement of the Rule and we thus object to their admission on that basis. These include:

 - Andy Aslanian – Lines 5, 6, 26, 49, 900, 932
 - Uribe – Line 38
 - Nadine Menendez – Lines 81, 84, 86, 88, 156, 162, 165, 166, 168, 174, 214, 217, 391, 564
 - Fernando Barruos – Lines 438, 439, 440, 441
- Fourth, as to a number of the references exhibits, we would object on relevance grounds (401 and 403), at least without some further understanding of the basis for including these exhibits. These include those references in Lines 37, 38, 81, 84, 86, 88, 214, 217, 879, 880, 881, 882, 883, and 1107.
- Finally, there are, as has been noted by others, entire exhibits cited where in fact, only sub-exhibits should be referenced. These include:
 - GX A101
 - GX 6A-112
 - GX 6A-206
 - GX 6A-312
 - GX B105
 - GX B209
 - GX B212
 - GX B215
 - GX B221
 - GX 6B-2301

- GX 6B-2401
- GX 6B-2501
- GX C102
- GX C116
- GX 6D-102
- GX E102
- GX E108
- GX E110
- GX E112
- GX E207
- GX 5F-201

GX 6D-102 also appears to be unauthenticated – this is an excel spreadsheet containing 278,805 calls and it is not apparent from the document or the Government’s exhibit index where this document came from, e.g., the production bates number.

GX 1304

First, there are again obvious errors in a number of lines in the summary:

- a. Line 1 – October 30, 2020 entry (first item) date is incorrect – should be 2018
- b. Line 24 appears to reference an incorrect exhibit
- c. Line 36 appears to reference an incorrect exhibit
- d. Line 64 – differs from stipulated transcription
- e. Line 68 – cell needs to be expanded to show full text and exhibit cite
- f. Line 113 – inadvertently includes “Text:” in quotes
- g. Line 117 – missing exhibit cite
- h. Line 134 – erroneous open quote before “sending”
- i. Line 153 – incorrect date – per GX 4F-30, this message is from the 19th (this exhibit appears to be corrupted; can you re-produce?)
- j. Lines 154-156, 158 appear to reference incorrect exhibit, to be missing referenced calls, or to have the from and to fields incorrect
- k. Lines 167, 169-170 appear to reference incorrect exhibit
- l. Lines 233-238 appear to reference incorrect exhibits
- m. Lines 282-285, 287-290 appear to reference incorrect exhibits
- n. Line 245 omits that K. Loneragan from Greenberg Traurig was cc’d
- o. Lines 301-308 appear to reference incorrect exhibit

Second, once again, a number of hearsay issues have been raised, though they need not have been because the Government has declined to identify those unindicted coconspirators, as we have requested. Accordingly, we have had to once again raise the question whether statements of the following individuals fall within Federal Rule of Evidence 801(d)(2)(E):

- Michael Soliman (possible hearsay objection to lines 6, 9, 12, 25, 27, 29, 30, 41, 52-55, 71, 73-75, 81, 83, 197, 201)
- Shaun Doherty (possible hearsay objections to lines 95, 99-100, 116, 129, 253, 328)
- Others associated with Heritage Advisors, including Ali Al-Thawadi, Sheikh Sultan bin Jassim al Thani, Stephanie McLean, Walid Sfier, etc. (possible hearsay objections to lines 101-103, 105-106, 124-127, 134, 139, 141, 220, 312, 316-318, 326)
- Michael McManus (possible hearsay objections to line 327)
- Unidentified sender (possible hearsay objection, under 801(d)(2)(E) on this or some other basis, which the defense cannot ascertain given that the sender is not identified – line 135)

Third, on behalf of Mr. Hana, it remains the case, as counsel for Senator Menendez have stated, that there are entire exhibits cited where in fact, only sub-exhibits should be referenced. While changes have been made in GX 1302, none have been made with regard to 1303 and 1304; with regard to the latter, these include GX A113; GX A114; GX A118; and GX A111.

Please advise of the Government's position on this issue; if you wish to discuss, we are always available for such conversations, if they will be fruitful.

Larry

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Exhibit C

LaBruno, Christina M.

From: Clark, Christina (NSD) <Christina.Clark3@usdoj.gov>
Sent: Thursday, June 27, 2024 10:40 PM
To: Lustberg, Lawrence S; Collart, Anne M.; Solano Jr., Ricardo; LaBruno, Christina M.
Cc: Mark, Eli (USANYS); Monteleoni, Paul (USANYS); Richenthal, Daniel (USANYS); Pomerantz, Lara (USANYS); Ghosh, Catherine (USANYS)
Subject: 1302 New Entries Objections
Attachments: Defense 1302 Summary Chart (2024.06.24) USAO to Hana.xlsx

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Hana team:

Apologies for the multiple emails. In addition to the email I previously sent, I have a few questions about the new exhibits you sent over earlier today on DX 1302 and also noted some objections below. I have also attached our objections to the *prior* version of DX 1302 that was previously provided. I think the overwhelming majority of objections in the attached are not to Hana exhibits, but you would likely know better than I.

Some of what is in the attached were addressed in my prior email, and I tried not to duplicate those documents to which we already objected below. We're obviously always happy to confer on any of the above or the attached.

Can you please proffer the relevance for:

- Hana 173
- Hana 205
- Hana 209
- Hana 207-100
- Hana B209-100
- Hana B224-100

We object to the following new exhibits:

- Hana 013, Hana 038 (401, 403)
- Hana 191 (401, 403)
- Hana 202 (hearsay, 403)
- Hana A101-100 (401, 403)
- Hana A101-101 (401, 403)
- Hana A101-102 (401, 403)
- Hana A101-104 (401, 403)
- Hana C102-102 (401, 403)
- Hana B207-100 (401, 403 – object to the Hispanic events part and Spanish heritage event but not general communications about Egypt and dinner)

I think that Hana A101-103 was previously admitted as a GX A101-70.

Christina

Christina A. Clark
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Southern District of New York
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M: (202) 412-4213

Exhibit D

LaBruno, Christina M.

From: LaBruno, Christina M.
Sent: Sunday, April 28, 2024 10:36 PM
To: Lustberg, Lawrence S; Solano Jr., Ricardo; Collart, Anne M.; Ball, Kelsey A.; Marino, Andrew J.; Guarracino, Jessica L.; Cicognani, Elena M.
Subject: FW: United States v. Menendez, et al., S4 23 Cr. 490 (SHS) -- draft summary exhibits
Attachments: 1302 - draft summary exhibit 2024.04.28 (for circulation).pdf; 1303 - draft summary exhibit 2024.04.28 (for circulation).pdf; 1304 - draft summary exhibit 2024.04.28 (for circulation).pdf

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From: Monteleoni, Paul (USANYS) <Paul.Monteleoni@usdoj.gov>

Sent: Sunday, April 28, 2024 10:29 PM

To: Adam Fee <adamfee@paulhastings.com>; Avi Weitzman <aviweitzman@paulhastings.com>; PH-MenendezTeam <PH-MenendezTeam@paulhastings.com>; Lustberg, Lawrence S <LLustberg@gibbonslaw.com>; Collart, Anne M. <ACollart@gibbonslaw.com>; Solano Jr., Ricardo <RSolano@gibbonslaw.com>; LaBruno, Christina M. <CLaBruno@gibbonslaw.com>; Cesar de Castro <cdecastro@cdecastrolaw.com>; Valerie Gotlib <vgotlib@cdecastrolaw.com>; Seth Agata <sagata@cdecastrolaw.com>; Shannon McManus <smcmanus@cdecastrolaw.com>

Cc: Mark, Eli (USANYS) <Eli.Mark@usdoj.gov>; Richenthal, Daniel (USANYS) <Daniel.Richenthal@usdoj.gov>; Pomerantz, Lara (USANYS) <Lara.Pomerantz@usdoj.gov>; Ghosh, Catherine (USANYS) <Catherine.Ghosh@usdoj.gov>

Subject: United States v. Menendez, et al., S4 23 Cr. 490 (SHS) -- draft summary exhibits

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